

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 11-04 Erie
)	
CRAIG ALAN FINLEY)	

MEMORANDUM OPINION and ORDER

Craig Alan Finley has filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct (ECF No. 115). In his 2255 Petition, Mr. Finley alleges several claims of ineffectiveness of his counsel, Thomas Patton. The government has filed a Motion for Discovery of Attorney-Client Records (ECF 117), seeking an Order permitting the government to review the defense case file in Mr. Finley's case for the sole purpose of discerning whether there is documentation refuting Mr. Finley's allegations of ineffective assistance of counsel.

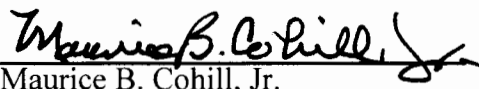
Mr. Finley has replied to the government's motion with a limited consent, implying that he agrees with the government that by raising claims of ineffectiveness of counsel he has waived attorney-client privilege, but only with respect to communications necessary to prove or disprove his claims. See United States v. Pinson, 584 F.3d 972, 977-78 (10th Cir. 2009); Rhone-Poulenc Rorer Inc. v. Home Indem. Co., 32 F.3d 851, 863 (3d Cir. 1994); and see Johnson v. Alabama, 256 F.3d 1156, 1178 (11th Cir. 2001) (waiver is limited to conversations that bear on the strategic choices at issue). Mr. Finley requests that the government's access to his file be limited only to documents that would refute Mr. Finley's allegations of ineffectiveness.

Mr. Finley's implied waiver of the attorney client privilege extends only to information in the file about communications regarding the challenged strategy at issue. Johnson, 256 F.3d at 1178. Therefore we will direct that Mr. Patton provide the government with any privileged

communications relevant to the specific ineffective assistance of counsel claims raised by Mr. Finley. At Mr. Patton's discretion, he may also provide an affidavit addressing the claims of ineffective assistance of counsel to the extent that such information is relevant and does not exceed Mr. Finley's limited waiver.

AND NOW, to-wit, this 24th day of November, 2015, it is hereby ORDERED, ADJUDGED and DECREED that the government's Motion for Discovery of Attorney-Client Records (ECF 117) is GRANTED in part as set forth in this Opinion.

IT IS FURTHER ORDERED that no later than January 13, 2016, counsel for Petitioner is hereby directed to provide counsel for the government privileged communications relevant to the specific ineffective assistance of counsel claims raised by Petitioner that Petitioner concedes is properly subject to discovery because Petitioner has waived the privilege. Counsel for Petitioner may also provide an affidavit addressing the claims of ineffective assistance of counsel to the extent that such information is relevant and does not exceed Petitioner's limited waiver.


Maurice B. Cohill, Jr.
Senior United States District Judge

cc: Craig Alan Finley, *pro se*
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